

Office of the Secretary of Defense

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and Reserve (NCESGR). NCESGR representatives can be contacted by calling 1-800-336-4590.

S. ASSISTANCE IN ASSERTING CLAIMS

1. A person may file a complaint with the Secretary of Labor if an employer, including any Federal Executive Agency or OPM, has failed or refused, or is about to fail or refuse, to comply with employment or reemployment rights and benefits. The complaint must be in writing, and include the name and address of the employer, and a summary of the allegation(s).

2. The Secretary of Labor shall investigate each complaint and, if it is determined that the allegation(s) occurred, make reasonable efforts to ensure compliance. If these efforts are unsuccessful, the Secretary of Labor shall notify the complainant of the results and advise the complainant of his or her entitlement to pursue enforcement.

3. The Secretary of Labor shall, upon request, provide technical assistance to a claimant and, when appropriate, to the claimant's employer.

T. ENFORCEMENT

1. State or Private Employers.

a. A person may request that the Secretary of Labor refer a complaint to the Department of Justice. If the Department of Justice is reasonably satisfied that the person is entitled to the rights or benefits sought, the Department of Justice may appear on behalf of, and act as attorney for, the complainant, and commence an action for appropriate relief, or the individual may commence an action on his or her own behalf in the appropriate Federal district court.

b. The district court hearing the complaint can require the employer to:

- (1) Comply with the law;
- (2) Compensate the person for any loss of wages or benefits suffered; and
- (3) If the court determines that the employer willfully failed to comply with the law, pay the person an amount equal to the amount of lost wages or benefits as liquidated damages.

c. A person may file a private suit against an employer without the Secretary of Labor's assistance if he or she:

- (1) Has chosen not to seek the Secretary's assistance;
- (2) Has chosen not to request that the Secretary refer the complaint to the Department of Justice; or
- (3) Has refused the Department of Justice's representation of his or her complaint.

d. No fees or court costs shall be charged or taxed against any person filing a claim. The court may award the person who prevails reasonable attorney fees, expert witness fees, and other litigation expenses.

2. Federal Government as the Employer.

a. The same general enforcement procedures established for private employers are applied to Federal Executive Agencies as an employer; however, if unable to resolve the complaint, the Secretary of Labor shall refer the complaint to the Office of Special Counsel, which shall represent the individual in a hearing before the Merit Systems Protection Board if reasonably satisfied that the individual is entitled to the rights and benefits sought. The claimant also has the option of directly filing a complaint with the Merit Systems Protection Board on his or her own behalf.

b. A person who is adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board may petition the United States Court of Appeals for the Federal Circuit to review the final order or decision.

3. Federal Intelligence Agency as the Employer. An individual employed by a Federal Intelligence Agency listed in subparagraph I.1. of this appendix, may submit a claim to the inspector general of the agency.

APPENDIX B TO PART 104—SAMPLE EMPLOYER NOTIFICATION OF UNIFORMED SERVICE

This is to inform you that (insert applicant or Service member's name) must report for military training or duty on (insert date). My last period of work will be on (insert date), which will allow me sufficient time to report for military duty. I will be absent from my position of civilian employment for approximately (enter expected duration of duty as specified on your orders, and include the applicable period you have to return or submit notification of your return to work) while performing military training or duty unless extended by competent military authority or delayed by circumstances beyond my control. I otherwise expect to return to work on (insert date).

Signature and date

Employer acknowledgment and date

PART 107—PERSONAL SERVICES AUTHORITY FOR DIRECT HEALTH CARE PROVIDERS

Sec.

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ENCLOSURE 1 TO PART 107—TABLE OF AUTHORIZED COMPENSATION RATES

§ 107.1

AUTHORITY: 10 U.S.C. 1091; Federal Acquisition Regulation (FAR), part 37.

SOURCE: 50 FR 11693, Mar. 25, 1985, unless otherwise noted.

§ 107.1 Purpose.

This part establishes policy under 10 U.S.C. 1091, "Contracts For Direct Health Care Providers," and assigns responsibility for implementing the authority for personal services contracts for direct health care providers.

§ 107.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD) and the Military Departments.

(b) It applies only to personal services contracts awarded under 10 U.S.C. 1091 for direct health care providers.

§ 107.3 Definitions.

(a) *Personal Services Contract.* A contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, to be government employees.

(b) *Direct Health Care Providers.* Health services personnel who participate in clinical patient care and services. This does not include personnel whose duties are primarily administrative or clerical, nor personnel who provide maintenance or security services.

§ 107.4 Policy.

(a) It is the policy of the Department of Defense that when in-house sources are insufficient to support the medical mission of the Military Departments, personal services contracts under 10 U.S.C. 1091 may be executed.

(b) It is the purpose of personal services contracts to facilitate mission accomplishment, maximize beneficiary access to military MTFs, maintain readiness capability, reduce use of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), and enhance quality of care by promoting the continuity of the patient/provider relationship.

(c) Personal services contractors shall be subject to the same quality assurance, credentialing processes, and other standards as those required of military health care providers. In addition, providers, other than para-professionals, must be licensed in accordance

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with State or host country requirements to perform the contract services.

(d) In establishing lines of authority and accountability, DoD supervisors may direct the activities of personal services contractors on the same basis as DoD employees. However, the rights, benefits, and compensation of personal services contractors shall be determined solely in accordance with the personal service contract.

(e) Requests for personal services contracts contemplating reimbursement at the maximum rate of basic pay and allowances under 10 U.S.C. 1091 shall be approved at the major command level. The 0-6 grade shall be used sparingly and subsequently will be subject to review.

§ 107.5 Procedures.

(a) Each contract under 10 U.S.C. 1091 with an individual or with an entity, such as a professional corporation or partnership, for the personal services of an individual must contain language specifically acknowledging the individual as a personal services contractor whose performance is subject to supervision and direction by designated officials of the Department of Defense.

(b) The appearance of an employer-employee relationship created by the DoD supervision of a personal services contractor will normally support a limited recognition of the contractor as equal in status to a DoD employee in disposing of personal injury claims arising out of the contractor's performance. Personal injury claims alleging negligence by the contractor within the scope of his or her contract performance, therefore, will be processed as claims alleging negligence by DoD military or civil service personnel.

(c) Compensation for personal services contractors under 10 U.S.C. 1091 shall be within the limits established in the Table of Authorized Compensation Rates (see enclosure 1). Prorated compensation based upon hourly, daily, or weekly rates may be awarded when a contractor's services are not required on a full-time basis. In all cases, however, a contractor may be compensated only for periods of time actually devoted to the delivery of services required by the contract.